

EXHIBIT B

(Adversary Proceeding Protective Order)

Entered on Docket
September 16, 2020EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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Signed and Filed: September 16, 2020

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*Counsel for Uber Technologies, Inc.*UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

ANTHONY SCOTT LEVANDOWSKI,

Debtor.

Bankruptcy Case No. 20-30242 (HLB)

Chapter 11

Hon. Hannah L. Blumenstiel

ANTHONY SCOTT LEVANDOWSKI,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

Adv. Pro. No. 20-03050

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this Adversary Proceeding (the “action”) are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. As set forth in Section 14.4 below, this Protective Order does not entitle the Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1. Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2. “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3. Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4. Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

2.5. Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.6. Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony,

1 transcripts, and tangible things), that are produced or generated in disclosures or responses to
2 discovery in this matter.

3 2.7. Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor,
6 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's
7 competitor.

8 2.8. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
9 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or
10 Non-Party would create a substantial risk of serious harm that could not be avoided by less
11 restrictive means.

12 2.9. "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely
13 sensitive "Confidential Information or Items" representing computer code and associated comments
14 and revision histories, formulas, engineering specifications, or schematics that define or otherwise
15 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
16 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided
17 by less restrictive means.

18 2.10. House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.11. Non-Party: any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.

22 2.12. Outside Counsel of Record: attorneys who are not employees of a party to this action
23 but are retained to represent or advise a party to this action and have appeared in this action on
24 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

25 2.13. Party: any party to this action, including all of its officers, directors, employees,
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1 2.14. Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 2.15. Professional Vendors: persons or entities that provide litigation support services (e.g.,
4 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
5 storing, or retrieving data in any form or medium) and their employees and subcontractors.

6 2.16. Protected Material: any Disclosure or Discovery Material that is designated as
7 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
8 CONFIDENTIAL – SOURCE CODE.”

9 2.17. Receiving Party: a Party that receives Disclosure or Discovery Material from a
10 Producing Party.

11 3. SCOPE

12 The protections conferred by this Order cover not only Protected Material (as defined above),
13 but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
14 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
15 presentations by Parties or their Counsel that might reveal Protected Material. However, the
16 protections conferred by this Order do not cover the following information: (a) any information that
17 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
18 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of
19 this Order, including becoming part of the public record through trial or otherwise; and (b) any
20 information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party
21 after the disclosure from a source who obtained the information lawfully and under no obligation of
22 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by
23 a separate agreement or order.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by this
26 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
27 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
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1 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 2 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
 3 time limits for filing any motions or applications for extension of time pursuant to applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 6 Non-Party that designates information or items for protection under this Order must take care to
 7 limit any such designation to specific material that qualifies under the appropriate standards. To the
 8 extent it is practical to do so, the Designating Party must designate for protection only those parts of
 9 material, documents, items, or oral or written communications that qualify – so that other portions of
 10 the material, documents, items, or communications for which protection is not warranted are not
 11 swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 13 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 14 encumber or retard the case development process or to impose unnecessary expenses and burdens on
 15 other parties) expose the Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that it designated for
 17 protection do not qualify for protection at all or do not qualify for the level of protection initially
 18 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
 19 mistaken designation.

20 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (see,
 21 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
 22 Discovery Material that qualifies for protection under this Order must be clearly so designated
 23 before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic documents, but
 26 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
 27 affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
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1 or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected material.
 2 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
 3 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 4 margins) and must specify, for each portion, the level of protection being asserted.

5 A Party or Non-Party that makes original documents or materials available for inspection
 6 need not designate them for protection until after the inspecting Party has indicated which material it
 7 would like copied and produced. During the inspection and before the designation, all of the
 8 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
 9 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
 10 copied and produced, the Producing Party must determine which documents, or portions thereof,
 11 qualify for protection under this Order. Then, before producing the specified documents, the
 12 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY
 13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
 14 CODE”) to each page that contains Protected Material. If only a portion or portions of the material
 15 on a page qualifies for protection, the Producing Party also must clearly identify the protected
 16 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,
 17 the level of protection being asserted.

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
 19 the Designating Party identify on the record, before the close of the deposition, hearing, or other
 20 proceeding, all protected testimony and specify the level of protection being asserted. When it is
 21 impractical to identify separately each portion of testimony that is entitled to protection and it
 22 appears that substantial portions of the testimony may qualify for protection, the Designating Party
 23 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
 24 to have up to 10 days to identify the specific portions of the testimony as to which protection is
 25 sought and to specify the level of protection being asserted. Only those portions of the testimony
 26 that are appropriately designated for protection within the 10 days shall be covered by the provisions
 27 of this Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 10
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1 days afterwards if that period is properly invoked, that the entire transcript shall be treated as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or
4 other proceeding to include Protected Material so that the other parties can ensure that only
5 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
6 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
7 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.”

9 Transcripts containing Protected Material shall have an obvious legend on the title page that
10 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
11 (including line numbers as appropriate) that have been designated as Protected Material and the level
12 of protection being asserted by the Designating Party. The Designating Party shall inform the court
13 reporter of these requirements. Any transcript that is prepared before the expiration of a 10-day
14 period for designation shall be treated during that period as if it had been designated “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
16 expiration of that period, the transcript shall be treated only as actually designated.

17 (c) for information produced in some form other than documentary and for any
18 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
19 container or containers in which the information or item is stored the legend “CONFIDENTIAL,”
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
21 SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the
22 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level
23 of protection being asserted.

24 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
25 designate qualified information or items does not, standing alone, waive the Designating Party’s
26 right to secure protection under this Order for such material. Upon timely correction of a
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1 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
2 accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
7 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
8 confidentiality designation by electing not to mount a challenge promptly after the original
9 designation is disclosed.

10 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution process
11 by providing written notice of each designation it is challenging and describing the basis for each
12 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
13 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
14 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
15 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
16 are not sufficient) within 5 days of the date of service of notice. In conferring, the Challenging Party
17 must explain the basis for its belief that the confidentiality designation was not proper and must give
18 the Designating Party an opportunity to review the designated material, to reconsider the
19 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
20 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
21 has engaged in this meet and confer process first or establishes that the Designating Party is
22 unwilling to participate in the meet and confer process in a timely manner.

23 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without court
24 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
25 Bankruptcy Local Rule 7007-1 (and in compliance with Civil Local Rule 79-5, if applicable) within
26 10 days of the initial notice of challenge or within 7 days of the parties agreeing that the meet and
27 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
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1 accompanied by a competent declaration affirming that the movant has complied with the meet and
 2 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make
 3 such a motion including the required declaration within 10 days (or 7 days, if applicable) shall
 4 automatically waive the confidentiality designation for each challenged designation. In addition, the
 5 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
 6 good cause for doing so, including a challenge to the designation of a deposition transcript or any
 7 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
 8 competent declaration affirming that the movant has complied with the meet and confer
 9 requirements imposed by the preceding paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating
 11 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 12 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 13 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
 14 retain confidentiality as described above, all parties shall continue to afford the material in question
 15 the level of protection to which it is entitled under the Producing Party's designation until the court
 16 rules on the challenge.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 19 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 20 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 21 the categories of persons and under the conditions described in this Order. When the litigation has
 22 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
 23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 25 secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
3 information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
6 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
7 Bound” that is attached hereto as Exhibit A;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
10 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
12 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A);

14 (d) the court and its personnel;

15 (e) court reporters and their staff, professional jury or trial consultants, and
16 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
21 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
22 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
23 this Protective Order.

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.

26 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
27 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered
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1 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
2 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
3 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
6 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
7 Bound” that is attached hereto as Exhibit A;

8 (b) Designated House Counsel of the Receiving Party (1) who has no
9 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this
10 litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and
11 (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;¹

12 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
13 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
14 A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

15 (d) the court and its personnel;

16 (e) court reporters and their staff, professional jury or trial consultants, and
17 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
18 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

19 (f) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.

21 7.4. Procedures for Approving or Objecting to Disclosure of “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
23 CODE” Information or Items to Designated House Counsel or Experts.

24 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
25 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
26 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

27 _____
28 ¹ This Order contemplates that Designated House Counsel shall not have access to any information or items designated
“HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets
2 forth the full name of the Designated House Counsel and the city and state of his or her residence
3 and (2) describes the Designated House Counsel's current and reasonably foreseeable future primary
4 job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may
5 become involved, in any competitive decision-making.

6 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
7 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
8 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
9 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" pursuant to paragraph 7.3(c) first must
10 make a written request to the Designating Party that (1) identifies the general categories of
11 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
12 SOURCE CODE" information that the Receiving Party seeks permission to disclose to the Expert,
13 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
14 attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5)
15 identifies each person or entity from whom the Expert has received compensation or funding for
16 work in his or her areas of expertise or to whom the expert has provided professional services,
17 including in connection with a litigation, at any time during the preceding five years,² and (6)
18 identifies (by name and number of the case, filing date, and location of court) any litigation in
19 connection with which the Expert has offered expert testimony, including through a declaration,
20 report, or testimony at a deposition or trial, during the preceding five years.

21 (b) A Party that makes a request and provides the information specified in the
22 preceding respective paragraphs may disclose the subject Protected Material to the identified
23 Designated House Counsel or Expert unless, within 7 days of delivering the request, the Party
24 receives a written objection from the Designating Party. Any such objection must set forth in detail
25 the grounds on which it is based.

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27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert
28 should provide whatever information the Expert believes can be disclosed without violating any confidentiality
agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating
Party regarding any such engagement.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within five days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as provided in Bankruptcy Local Rule 7007-1 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

8. PROSECUTION BAR

Absent written consent from the Producing Party, any individual who receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information shall not be involved in the prosecution of patents or patent applications relating to the subject matter of this action, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.³ To avoid any doubt, "prosecution" as used in this paragraph does not

³ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 include representing a party challenging a patent before a domestic or foreign agency (including, but
2 not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This
3 Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received by the
5 affected individual and shall end two (2) years after final termination of this action.

6 9. SOURCE CODE

7 (a) To the extent production of source code becomes necessary in this case, a
8 Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if
9 it comprises or includes confidential, proprietary or trade secret source code.

10 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
11 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph 8,
13 and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4,
15 with the exception of Designated House Counsel.

16 (c) Any source code produced in discovery shall be made available for inspection,
17 in a format allowing it to be reasonably reviewed and searched, during normal business hours or at
18 other mutually agreeable times, at an office of the Producing Party’s counsel or another mutually
19 agreed upon location. The source code shall be made available for inspection on a secured computer
20 in a secured room without Internet access or network access to other computers, and the Receiving
21 Party shall not copy, remove, or otherwise transfer any portion of the source code onto any
22 recordable media or recordable device. The Producing Party may visually monitor the activities of
23 the Receiving Party’s representatives during any source code review, but only to ensure that there is
24 no unauthorized recording, copying, or transmission of the source code.

25 (d) The Receiving Party may request paper copies of limited portions of source
26 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
27 other papers, or for deposition or trial, but shall not request paper copies for the purpose of
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1 reviewing the source code other than electronically as set forth in paragraph (c) in the first instance.
 2 The Producing Party shall provide all such source code in paper form, including bates numbers and
 3 the label “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Producing Party may challenge the
 4 amount of source code requested in hard copy form pursuant to the dispute resolution procedure and
 5 timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the
 6 Receiving Party is the “Designating Party” for purposes of dispute resolution.

7 (e) The Receiving Party shall maintain a record of any individual who has
 8 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
 9 maintain all paper copies of any printed portions of the source code in a secured, locked area. The
 10 Receiving Party shall not create any electronic or other images of the paper copies and shall not
 11 convert any of the information contained in the paper copies into any electronic format. The
 12 Receiving Party shall only make additional paper copies if such additional copies are (1) necessary
 13 to prepare court filings, pleadings, or other papers (including a testifying expert’s expert report), (2)
 14 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies
 15 used during a deposition shall be retrieved by the Producing Party at the end of each day and must
 16 not be given to or left with a court reporter or any other unauthorized individual.

17 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 18 LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation that compels
 20 disclosure of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY
 21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
 22 CODE,” that Party must:

- 23 (a) promptly notify in writing the Designating Party. Such notification shall
 24 include a copy of the subpoena or court order;
- 25 (b) promptly notify in writing the party who caused the subpoena or order to issue
 26 in the other litigation that some or all of the material covered by the subpoena or order is subject to
 27 this Protective Order. Such notification shall include a copy of this Protective Order; and
 28

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.⁴ If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

2. promptly provide the Non-Party with a copy of the Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 7 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.⁵ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production

⁵ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
2 parties reach an agreement on the effect of disclosure of a communication or information covered by
3 the attorney-client privilege or work product protection, the parties may incorporate their agreement
4 in a stipulated protective order submitted to the court.

5 14. MISCELLANEOUS

6 14.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek
7 its modification by the court in the future.

8 14.2. Right to Assert Other Objections. No Party waives any right it otherwise would have
9 to object to disclosing or producing any information or item on any ground not addressed in this
10 Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of
11 any of the material covered by this Protective Order.

12 14.3. Export Control. Disclosure of Protected Material shall be subject to all applicable
13 laws and regulations relating to the export of technical data contained in such Protected Material,
14 including the release of such technical data to foreign persons or nationals in the United States or
15 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
16 data, and the Receiving Party shall take measures necessary to ensure compliance.

17 14.4. Filing Protected Material. Without written permission from the Designating Party or
18 a court order secured after appropriate notice to all interested persons, a Party may not file in the
19 public record in this action any Protected Material. A Party that seeks to file under seal any
20 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
21 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
22 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
23 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
24 protection under the law. If a Receiving Party's request to file Protected Material under seal
25 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the
26 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
27 instructed by the court.
28

1 15. FINAL DISPOSITION

2 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
3 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
4 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
5 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
6 the Protected Material is returned or destroyed, the Receiving Party must submit a written
7 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
8 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
9 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
10 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
11 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
12 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
13 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
14 and expert work product, even if such materials contain Protected Material. Any such archival
15 copies that contain or constitute Protected Material remain subject to this Protective Order as set
16 forth in Section 4 (DURATION).

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Protective Order that was issued by the United States Bankruptcy Court for the
Northern District of California on _____ [date] in the case of _____ **[insert formal name
of the case and the number and initials assigned to it by the court]**. I agree to comply with and
to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to this
Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States Bankruptcy Court for the
Northern District of California for the purpose of enforcing the terms of this Protective Order, even
if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as
my California agent for service of process in connection with this action or any proceedings related
to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]

END OF ORDER

COURT SERVICE LIST

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